IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-644

STATE OF MINNESOTA EX REL.
J. J. WILD, M.D., Ph.D.

Appellant,

vs.

JAMES C. OTIS, ESQUIRE,

Appellee,

and

STATE OF MINNESOTA EX REL.
J. J. WILD, M.D., Ph.D.,

Appellee,

vs.

OSCAR R. KNUTSON, ESQ., et al.,

Appellees.

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. ———

STATE OF MINNESOTA EX REL.
J. J. WILD, M.D., Ph.D.,

Appellant,

vs.

JAMES C. OTIS, ESQUIRE,

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STATE OF MINNESOTA EX REL.
J. J. WILD, M.D., Ph.D.,

Appellant,

vs.

OSCAR R. KNUTSON, ESQ., et al,

Appellees.

JURISDICTIONAL STATEMENT
AND APPENDIX

Comes now the Appellant herein and respectfully shows the Court, pursuant to Rule 15 of the Supreme Court of the United States:

(a) The official opinion is Minnesota Supreme Court No. 481, cited at ___Minn. ____, 257 N.W. 2d 361 (1977) [Consolidated Cases Nos. 46898 and 46882) Appendix.

(b) Jurisdiction is invoked on the following grounds:

(i) The is an appeal from the Judgment of the Minnesota Supreme Court that a private citizen may not commence and maintain a private prosecution for crimes when the prosecuting attorney refuses to prosecute. The said Judgment of the Minnesota Supreme Court draws into question the validity of a state statute authorizing the Minnesota Supreme Court to establish and enforce Rules of Criminal Procedure. The rule enacted

thereunder permits criminal prosecutions only upon the written approval of the prosecuting attorney. The decision of the Minnesota Supreme Court is in favor of the validity of the statute and the rule enacted thereunder. The decision of the Minnesota Supreme Court is a constitutional reductio ad absurdum in that it attempts to establish the ridiculous principle that "political expediency" determines whether or not a guilty person is prosecuted. The victim of a crime is totally deprived of his ancient right to commence and maintain a criminal prosecution. The statutes pursuant to which this appeal is brought are 28 U.S.C.A. 1257 (2), 28 U.S.C.A. 2106 and 28 U.S.C. A. 2101 (c).

(ii) The date of the Judgment of the Minnesota Supreme Court is August 12,

1977. The Notice of Appeal was filed on Monday, October 24, 1977, with the Supreme Court of the State of Minnesota.

(iii) 28 U.S.C.A. 1257 (2) - pertinent provisions as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be received by the Supreme Court as follows:
> (1) . . .
>
> (2) By appeal, where is drawn into question the validity of a statute of any state on the grounds of its being repugnant to the Constitution . . . of the United States, and the decision is in favor of its validity." (Compare 28 U.S.C.A. 2103 insofar as it may be relative to corollary issues.)

28 U.S.C.A. 2106:

> "The Supreme Court . . . may affirm, modify, vacate, set aside or reverse any judgment, decree or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree or order, or require such

> further proceedings to be had as may be just under the circumstances."

(iv) The following cases, it is believed, amply sustain the exercise of jurisdiction in this case:

Bantam Books, Inc. v. Sullivan, R.I. 1963, 83 S.Ct. 631, 372 U. S. 58, 9 L. Ed. 2d 584;

Winters v. People of State of New York, N.Y., 1948, 68 Sup.Ct.655, 338 U.S. 507, 92 L.Ed. 840;

Near v. State of Minnesota, Minn., 1931, 51 S.Ct. 625, 28 U.S.697, 75 L.Ed. 1357;

Duncan v. Louisiana, 1967, 391 U. S.145, (see esp. pp. 168-170);

Justice Black's Appendix in Adamson v. Calif., 1947, 322 U.S. 46 @ p. 73;

Griswold v. Conn., 1961, 381 U.S. 479;

Cooper v. Aaron, 1958, 358 U.S. 1;

Brown v. Board of Education, 330 U.S. 258.

(v) Chapter 250, Laws of Minnesota, 1971, as amended by Chapter 390, Laws of Minnesota, 1974 (M.S.A. 480.059) giving Minnesota Supreme Court power to promulgate rules.

Rule 2.02, Minnesota Rules of Criminal Procedure:

> "2.02 Approval of Prosecuting Attorney
>
> A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed."

(c) Questions presented:

(1) Does the victim of a crime have the right under the Federal Constitution as a citizen to prosecute the criminals

who perpetrated that crime against him when the government-paid prosecuting attorney refuses prosecution without legal justification when such refusal will effectively and permanently prevent the prosecution irrespective of the guilt of the accused as the statute of limitations will bar the prosecutions because of the delay.

Or, stated another way,

Do government prosecutors have absolute unrestrained exclusive discretion in refusing to commence or undertaking criminal prosecutions under the Federal Constitution?

The Minnesota Supreme Court held in the affirmative.

(d) Statement of the case and facts:

The case below before the Minnesota Supreme Court was a consolidated appeal

from two judgments dismissing appellant's complaints charging high state officials of the government, including active and retired Justices of the Minnesota Supreme Court, with the commission of felonies.

Judge Allen Oleisky of the Fourth Judicial District of Minnesota dismissed appellant's complaint charging Minnesota Supreme Court Justice James C. Otis with multiple counts of felonious perjury. (See Order and Memorandum, 4th District, App. pp. A-12 through A-18.)

Judge Sidney P. Abramson of the Second Judicial District of Minnesota dismissed appellant's complaint charging former Chief Justice Knutson, current Associate Justices Rogosheske, Otis, Peterson, Kelly, Todd and MacLaughlin, Governor Anderson, State Senator Jack Davies and Supreme Court Administrator Klein with

multiple counts of feloniously corrupting and feloniously conspiring to corrupt members of the State Legislature. (See Order and Memorandum, 2nd District, App. pp. A-18 through A-22.)

The decisions of both judges were on jurisdictional grounds. Therefore, for purposes of this appeal, all allegations of each complaint are unchallenged and stand as absolute fact. The motions of the defendants below themselves asked for dismissal on jurisdictional grounds not on grounds of innocence. The defendants charged with high office and public trust did not even declare their innocence, much less did they attempt to prove their innocence by affidavit or otherwise. The defendants below in effect told the trial courts "Even if we are guilty of these felonies, you are powerless to try us be-

cause the county attorneys involved have refused to prosecute."

In other words, the defendants below did not ask in the alternative in their motions for summary judgment because of innocence; they asked for dismissal on technical legalistic grounds of lack of "power" in the District Courts of Minnesota to hear criminal cases in their districts if commenced by citizens who have been victimized by crimes. Thus, in this appeal, appellant is entitled to presumption that the complaints are true and the defendants are guilty of felonious criminal acts.

The sole issue is whether or not the Fourth and Second Judicial Districts of Minnesota have "jurisdiction", i.e, power to try the defendants for the crimes. The defendants (respondents here) and

their counsel and the two trial judges admit by clear implication that had the respective county attorneys instituted the actions, they would have "jurisdiction".

The uncontroverted facts then are as recited above and as delineated in detail in the respective complaints. The Minnesota Supreme Court decision added little as it affirmed the trial courts.

The respondents are guilty of violating their public trust by the commission of felonious crimes against the appellant. The respective county attorneys refuse to prosecute appellant's complaints of their criminal acts without justification. The Statute of Limitations will forever bar these prosecutions unless this Court reverses and directs the trial of these respondents.

The Federal constitutional questions

raised in opposition to the motions to dismiss at trial level and in the Brief of Appellant before the Minnesota Supreme Court.

(d) The federal questions are substantial.

(i) Importance of Reaffirming Citizens' Right to Private Prosecution.

(aa) Public Interests Demand Right to Private Prosecution.

If this Court sustains the position taken by the courts below, to-wit: that the commencement of a criminal procedure is purely a "political" matter, resting solely in the discretion of the county attorney, equal protection under the law would be a mockery. Those with hig political connections could commit crimes with impugnity as a result of their personal whimsy or caprice. There would be

There would be in truth a fundamental breakdown of constitutional right.

All powers not specifically granted to the government are reserved to the people. (See United States Constitution Amendments IX and X.) The people must always retain their right to institute criminal proceedings when corrupt or incompetent public officials refuse to do their duty. I reiterate that nowhere in either the Minnesota Constitution or in the Federal Constitution has this residuary power been taken from the people and given exclusively to county or, for that matter, to any prosecutor.

The trial courts and the Minnesota Supreme Court below contend that Rule 2 of the Minnesota Rules of Criminal Procedure invalidates the fundamental right to private prosecution without constitutional

amendment and, in fact, without due process of any nature. As pointed out supra, the Minnesota Legislature simply delegated rulemaking power to standardize criminal procedure in the State of Minnesota to the Supreme Court. Rule 2, therefore, is nothing more than a procedural guideline and has no "substantive" effect in the law or the constitutional rights of citizens. As a matter of fact, prior to the effective date of the new Rules of Criminal Procedure, the Chief Justice of the Minnesota Supreme Court circulated the proposed rules and on Page 4 of the proposed rules, the following comment is applicable to Rule 2.02:

> "Rule 2.02 leaves to other laws the question of the available remedy when a local prosecutor refuses to approve a complaint."

Therefore, the courts below are clear-

ly in error.

(bb) Right of Appellant to Redress, as Victim of Crimes, Requires Private Prosecution.

Had I, as a citizen and victim, not undertaken to commence prosecution privately, the Statute of Limitations would have forever barred the defendants' (respondents here) responsibilities for their crimes. (See Minnesota Statutes Annotated 628.26.)

What lachrymose decadence in our Republic if the lower courts' decisions are affirmed! The trial courts and the Minnesota Supreme Court below held by necessary implication that high publis officials can commit felonious crimes against the citizens who gave them their elevated status with the power of absolution given to friendly county attorneys. The criminally corrupt governmental officials can be to-

tally insulated thereby from prosecution by county attorneys who hope to curry political favor by refusing to prosecute, irrespective of guilt or seriousness of the crime.

The orders of the Minnesota Supreme Court and trial courts must be reversed and the cases remanded for trial.

Respectfully submitted,

J. J. WILD, M.D., Ph.D.
1100 East 36th Street
Minneapolis, Minnesota 55407
Attorney Pro Se

APPENDIX

(TITLE OF CAUSES)

Endorsed
Filed August 12, 1977, John McCarthy, Clerk, Minnesota Supreme Court

S Y L L A B U S

1. Appellant judges must decide for themselves whether recusal is required in case in which party claims bias.

2. A private citizen has no authority to commence and maintain private prosecutions for alleged violations of criminal law.

Affirmed.

Considered and decided by Sheran, C. J., and Yetka, Scott, Winton* and Preece*, JJ., without oral argument.

O P I N I O N

SHERAN, Chief Justice.

These consolidated appeals raise the issue of whether a private citizen may commence and maintain private prosecu-

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Acting as Justice of the Supreme Court by appointment pursuant to Minn.Const.art. 6, § 2, and Minn. St. 2.724, subd. 2.

tions for alleged violations of the criminal law. We hold that he may not.

Prior to commencing the present action, plaintiff J. J. Wild, requested the county attorneys of Ramsey and Hennepin Counties to approve criminal complaints which he had prepared against defendants, but the respective county attorneys refused to prosecute. Plaintiff then tried unsuccessfully to persuade the grand juries of the two counties to issue indictments. Finally, plaintiff filed complaints himself in an attempt as a private citizen to prosecute defendants.

The complaint against defendants filed in Ramsey County alleged a violation of the criminal laws against conspiracy to commit a crime, Minn. St. 609.175, subd. 2, and corruptly influencing a legislator, §§ 609.425. The complaint against defendant Mr. Justice James C. Otis in Hennepin County alleged a violation of the criminal law against perjury, §§ 609.48. The complaints requested that the named defendants be convicted and sentenced according to law. The respective compl-

aints were dismissed by the district courts of Ramsey and Hennepin Counties, and these appeals from judgments followed.

1. A preliminary issue is presented by the affidavits of prejudice which plaintiff has filed against the special panel of justices considering his appeal.

Section 3.42, and the commentary thereto, of the A.B.A. Standards of Judicial Administration, Standards Relating to Appellate Courts (Approved Draft, 1977), state the appropriate standards and procedures to be followed in the case of challenges such as this:

"3.42 Disqualification of Judges.

"A judge of an appellate court should be subject to disqualification on the grounds set forth in the Code of Judicial Conduct recommended by the American Bar Association, and in any case in which the judgment under review is one by a court in whose decision he participated as judge in a lower court.

"Commentary

"An appellate judge should be subject to challenge for cause on the same grounds as a trial judge, and also when an appeal involves a

review of his own decision. The most difficult problem concerns the procedure to be employed. As in the challenge of a trial judge, if the challenge is sufficient on its face and any reasonable doubt of the judge's disinterestedness is suggested, the judge may be expected to disqualify himself. If he does not do so, in the case of a trial judge factual issues relating to disqualification should properly be determined by another judge. See § 2.32, Standards Relating to Trial Courts. In the case of an appellate judge, however, that procedure would subject the judge to decision of his disinterestedness by official peers with whom he may continue to serve in a collegial capacity in deciding the case. Moreover, because an appellate court decides questions on law rather than fact, the question of an appellate judge's 'bias' is often practically indistinguishable from the question of his views on the law, which are not properly subject to disputation through the recusal procedure. Given these complications, it is better that the question of recusal be decided by the judge himself. If he is a judge of an intermediate appellate court there remains the remedy of appeal from a decision in which he participates; if he is a judge of a supreme court, reliance must be placed on his recognition that a court should not only be disinterested but that it should appear to be so.

"In some jurisdictions, provision for peremptory challange of a trial judge is permitted. See Commentary to § 2.32 (b), Standards Relating to Trial Courts. This procedure is inappropriate in the case of an appellate judge. In the collegial decision-making of an appellate court an individual judge's purely personal views are of less significance than they would be in a trial court and he is subject to collegial restraint should he be inclined to act on them; an appellate judge has few occasions for exercising the broad discretion reposing in a trial judge; and in appellate litigation there is no occasion for the intense personal interaction between the judge and the lawyers and litigants that may occur in a trial court. Moreover, an appellate judge's established views on law and justice, at least up to a point, are a proper element of the contribution he makes to the function of an appellate court, particularly in the development of the law. A peremptory challenge might easily be abused to exclude a judge solely because a litigant disagreed with his views."

The three justices of the supreme court and the two district court judges assigned to the hearing of this matter pursuant to Minn. Const. art. 6, §§ 2, and Minn. St. 2.724, subd. 2, have app-

lied these standards for recusal and have determined that the affidavit of prejudice filed by plaintiff against them is without justification. District Court Judge Warren A. Saetre, originally assigned to consider this case, has recused for personal reasons.

2. As stated earlier, the issue which plaintiff raises in his appeal is whether a private citizen may commence and maintain private prosecutions for alleged violations of criminal law.

In answering this question, we start with Rule 17.01, Rules of Criminal Procedure. This rule contemplates that felonies are to be prosecuted by either indictment or complaint. The rule does not mention or allude to any right of private citizens to commence and maintain criminal prosecutions privately.

Rule 2.02, Rules of Criminal Procedure, governing prosecution by complaint, provides as follows:

> "A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute

> the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed."

This rule is in accord with A. B. A. Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function (Approved Draft, 1971), §§ 2.1, which provides: "The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline."

The comment to Rule 2.02. Rules of Criminal Procedure, states that "Rule 2.02 leaves to other laws the question of the available remedy when a local prosecutor refuses to approve a complaint." One obvious available remedy is for the aggrieved citizen to try to appear before the grand jury and persuade it to indict. While a citizen does not have a right to appear before the grand jury, he is free to attempt to get the grand jury to take action, and under Rule 18.04, Rules of

Criminal Procedure, the grand jury can permit an aggrieved citizen to appear as a witness for this purpose. The grand jury under Rules 18.01 and 18.03 consists of 16 to 23 members, randomly selected from a cross section of the county. Permitting citizens to take complaints directly to this body serves as a kind of "safety valve" and has much to commend it. See, commentary to §§ 2.1 of the A.B.A. Standards Relating to the Prosecution Function.[1]

There are other remedies available to an aggrieved citizen when a prosecutor refuses to commence a prosecution:

(a) Minn. Stat. 388.12 provides:

> "The judge of any district court may by order entered in the minutes at any term of court appoint an attorney of such court to act as, or in the place of, or to assist, the county attorney at such term, either before the court or grand jury. The person so appointed shall take the oath required by law of county attorneys and thereupon may perform all his duties at such term of court, but

[1] In this case, as we stated earlier, plaintiff tried to get the respective grand juries of Ramsey and Hennepin Counties to indict but was unsuccessful.

> shall receive no compensation where the county attorney is present at such term, except by his consent, and to be paid from his salary."

Arguably, a private citizen could petition the district court for action pursuant to this statute and the court could appoint a special prosecutor if it decided that this was necessary. See Comment, 65 Yale L. J. 209, 215. See, also, the discussion in the commentary to §§ 2.1 of the A.B.A. Standards Relating to the Prosecution Function. There may be constitutional objections to this statute, but that is not an issue which we need to decide. We merely cite this statute as one of the possible alternatives available in the case of allegedly unjustified prosecutorial inaction.

(b) Another possible remedy is provided by Minn. St. 8.01, which reads as follows:

> "The attorney general shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil causes of like nature in all other courts

> of the state whenever, in his opinion, the interests of the state require it. Upon request of the county attorney he shall appear in court in such criminal cases as he shall deem proper. Whenever the governor shall so request, in writing, he shall prosecute any person charged with an indictable offense; and in all such cases he may attend upon the grand jury and exercise the powers of a county attorney."

Under this statute a citizen could appeal to the governor, who then might order the attorney general to commence prosecution.

(c) A third potential remedy is mandamus. The problem with mandamus from the standpoint of an aggrieved citizen is that the decision whether to initiate a particular prosecution is discretionary[2] and therefore normally beyond the scope of mandamus. For a full discussion, see, Note, 13 Am. Crim. L. Rev. 563, 585.

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[2] See, State v. Mayhood, ___Minn.___, 241 N.W.2d 803 (1976), where we stated that there may be cases where a prosecutor properly may decline to prosecute even where evidence exists which would support a conviction. We in no way imply that the evidence would have supported convictions in this case.

In mentioning these alternatives, we do not mean to recommend them to plaintiff. Rather, we cite them merely to demonstrate that the approach taken in Minnesota is (a) to give the grand jury and the county attorney the authority to commence prosecutions (with each theoretically operating as a check on the unjustified inaction of the other), and (b) to provide safety-valve alternatives for use in extreme cases of prosecutorial inaction.

In arguing that a private citizen has a right to commence and maintain a criminal prosecution, plaintiff makes many of the arguments that are made in the leading law review article on the subject. What plaintiff neglects to mention is that the authors of the comment concluded that legislative authority was needed for a system of permitting private prosecution. Comment, 65 Yale L. J. 209, 233. Further, the model statute provided by the authors of the comment, like Minn. St. 388.12, authorizes appointment by the court of a substitute attorney and does not permit the aggrieved private citizen to prosecute the action himself.

Plaintiff has not cited and we have not found any authority justifying the instant actions. This is not surprising because to permit such prosecutions would entail grave danger of vindictive use of the processes of the criminal law and could well lead to chaos in the administration of criminal justice.

We are satisfied that the district courts acted properly in dismissing the attempted prosecutions.

Affirmed.

MR. JUSTICES Otis, Rogosheske, Peterson, Kelly, Todd, MacLaughlin, and Knutson took no part in the consideration or decision of this case.

* * * * * * * * * * * * * * * * * * * *

STATE OF MINNESOTA — IN DISTRICT COURT
COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

STATE of Minnesota ex rel.
J.J. Wild, M.D.,Ph.D.,

Plaintiff, ORDER FOR

-vs- JUDGMENT OF DISMISSAL.

James C. Otis, Esq.,

Defendant. File No.720506

The above-entitled matter came on for hearing before the undersigned, one of the judges of the above-named Court, at a Special Term thereof on the 5th day of December, 1975, at the Government Center, City of Minneapolis, County of Hennepin, State of Minnesota.

Plaintiff appeared pro se; and Leonard J. Keyes, Esq., appeared on behalf of defendant.

The Court, upon oral arguments, together with all the files, records and proceedings herein, and being fully advised in the premises,

IT IS HEREBY ORDERED that the above-entitled action be dismissed because the Court lacks jurisdiction over the subject matter. Defendant is therefore entitled to judgment of dismissal against plaintiff, plus costs.

/s/Allen Oleisky
Judge of District Court

Dated this 26th day of February, 1976.

MEMORANDUM

Plaintiff in the instant action would havr this Court sustain the intiation of a criminal prosecution by one private

citizen against another. Plaintiff's pleadings, in which he alleges the commission of the crime of perjury by the defendant and demands that defendant be found guilty of and sentenced for this alleged crime by this court, have not been approved in writing by the Hennepin County Attorney, nor, in the certified unavailability of the Hennepin County Attorney, by a judicial officer authorized to issue process for alleged felonies.

This court's criminal jurisdiction is defined and governed by the due process clauses of the state and federal constitutions and by the Minnesota Rules of Criminal Procedure. These Rules, constituting the rudiments of procedural due process, set forth the exclusive cases of criminal jurisdiction. Rule 10.01 provides in pertinent part:

> "Pleadings in criminal proceedings shall be by the indictment, complaint or tab charge and the pleas prescribed by these rules . . . "

Rule 17.01 provides that:

> "An offense which may be punished by life imprisonment shall be prosecuted by indictment. Any other offense defined by state law may be

> prosecuted by indictment or by a complaint as provided in Rule 2 . . . "

Rule 2.02 provides that:

> "A complaint shall not be filed or process issued thereon without the written approval of the prosecuting attorney authorized to prosecute the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed."

Comment, Rule 2 states that "Under these rules (See Rules 10.01, 3.01, 17.01) the complaint, the tab charge and indictment are the only accusatory pleadings by which a prosecution may be initiated and upon which it may be based . . . Rule 2.02 requires the prosecuting attorney's written approval of the filing of a complaint. This is in accord with ABA Standards, Prosecution Function 3.4 (Approved Draft, 1968) that the decision to institute criminal proceedings shall be initially and primarily the responsibility of the prosecutor."

In view of the fact that the Hennepin County Attorney, the prosecuting attorney authorized to prosecute the offense charged in the instant action, has not approved the issuing of a complaint against defendant herein, either in writing or otherwise, and the fact that the Hennepin County Attorney is and has been available at all times, this court (or any other court) does not have jurisdiction or authority to entertain this action. The determination of whether or not to institute a criminal prosecution is purely a prosecutorial function. Furthermore, it should be noted that under Rule 30 of the of the Minnesota Rules of Criminal Procedure, the prosecuting attorney has the absolute right to dismiss a complaint even without the court's approval. The prosecutorial function is neither judicial nor legislative, but rests exclusively in the hands and discretion of those public authorities to whom it has been entrusted by constitutional and statutory mandates. See: State ex rel. Kurkierewicz v. Cannon, 42 Wis.2d 368, 166 N.W. 2d 255 (1969) Criminal prosecutions can-

not rest in the hands of private citizens.

When a local prosecutor refuses to approve a complaint, as referred to in Comment, Rule 2.02, the remedy available is to seek indictment by the grand jury, or should this effort fail (as it did with regard to plaintiff's allegations in the instant action since it returned a No Bill against defendant when the case was presented to it), to resort to the electorate.

* * * * * * * * * * *

JOHN JULIAN WILD, M.D.,Ph.D.

15 April 1976

The Honorable Allen Oleisky

. . .

Ref. File No. 720506,Wild v. Otis

I am preparing an appeal in the above entitled matter and I noticed in your memorandum (page 2) you erroneously state that the grand jury returned a no bill in favor of the defendant Judge Otis. This is not the case: the grand jury, being led by the prosecuting attorney, did nothing. I would appreciate your reissuing your memorandum so that it is in conformity with the facts.. . .

(Above letter ordered attached to original Order in File No. 720506 by Judge Oleisky.)

* * * * * * * * * * *

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

STATE OF MINNESOTA EX REL.
J. J. WILD, M.D.,Ph.D.,
Plaintiff,

vs.

OSCAR R. KNUTSON, ESQ.,et al.
Defendants.

O R D E R
(File No.409747)

The above matter came on for hearing before the undersigned Judge of the District Court at a Special Term of said court held on April 13, 1976, in St.Paul, Minnesota.

Plaintiff appeared in person, pro se; and Defendants appeared by Thomas H. Jensen, Esq., Special Assistant Attorney General for Minnesota. In addition, James M. Williams, Esq., appeared as observer with plaintiff and was allowed to address the Court on plaintiff's behalf.

Defendant moved to dismiss Plaintiff's action on the grounds that there is no

jurisdiction in this court to hear the action, and further on the grounds that Plaintiff's complaint failed to state a claim upon which relief could be granted.

The Court has reviewed the files and records herein, and on the pleadings, the memoranda of the parties and their oral arguments at the time of hearing, makes the following order:

IT IS ORDERED:

(1) Defendants' motion to dismiss Plaintiff's cause of action is herewith granted;
and

(2) Plaintiff's cause of action is dismissed with prejudice.

Dated: April 20, 1976

/s/Sidney P. Abramson
JUDGE OF DISTRICT COURT

(Title of Cause)

MEMORANDUM

The motion to dismiss arises out of plaintiff's action which, if properly understood by this court, alleges that various violations of Minnesota Statutes amounting to criminal offenses were presented to the Ramsey County Prosecutor, who refused to accept and prosecute, and,

what is more, in conjunction with the unnamed foreman of the Ramsey County Grand Jury, reportedly refused plaintiff's request to appear before that body resulting in the running of the Statute of Limitations on the asserted criminal conduct. These facts, according to plaintiff, grant this Court jurisdiction to entertain this "citizens action" to insure "the alleged crimes will (not) go unprosecuted and unpunished."

The named defendants include the former Chief Justice of the Minnesota Supreme Court; five Associate Justices; the Court Administrator; a State Senator and Minnesota's Governor. Plaintiff contends in summary that from January 1973 through March 9, 1973, defendants conspired to influence the Legislature by concealment and deception to hide from the Legislature the asserted interrelationship between the State Supreme Court, a local foundation and local insurance companies, apparently to the detriment of plaintiff insofar as the Legislature enacted into law Laws of Minnesota 1973, Chapter 18, Section 1. The above section allowed disqualified judges to name their successors to hear

an appeal in a case plaintiff had successfully presented in the District Court of Hennepin County. The appeal resulted in a reversal of the prior district court verdict.

Plaintiff contends this conduct is tantamount to two felonies, specifically conspiracy as well as corruptly influencing legislators. Plaintiff accordingly prays that the named defendants be adjudged guilty of two counts of violation of the criminal statutes, and further that they be sentenced according to law.

Defendants' motion includes a request for an order dismissing the whole action on grounds that the Court lacks jurisdiction of both the subject matter and personal jurisdiction of the defendants; and further on the grounds that plaintiff's complaint fails to state a cause of action or a claim upon which relief may be granted. For all of the reasons stated by defendants, plaintiff's action is herewith dismissed. The Court has neither personal nor subject matter jurisdiction. (See Rule 2.02, 10.01, 17.01 MRCP.) In addition, plaintiff's claim fails to

state a cause of action, as a private citizen has no authority to bring a criminal action, that is, a private citizen cannot state a claum upon which criminal sanctions alone can be based. Keenan v. McGrath, 328 Fed 2d 610 (First Cir.1964).

In U.S. ex rel Savage v. Arnold, 403 Fed.Sup. 172 (ED Pa) 1975, the Court uses language which recognizes that in an appropriate case a court may well refer a private criminal complaint to a United States Attorney sua sponte without the formalistic steps provided for by Federal procedure. "However realtor's complaint, as he has presented it, is not worthy of such consideration, since it is totally lcaking in the essential elements required. . . " 403 FS 172 at 175.

Plaintiff's action here is worthy of no consideration since it lacks any of the essential elements required. Accordingly, defendants' motion for dismissal is granted.

SPA.

IN THE

Supreme Court of the United States

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No. 77-644

STATE OF MINNESOTA ex rel.
J. J. WILD, M.D., Ph.D.,

Appellant,

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JAMES C. OTIS, Esquire,

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STATE OF MINNESOTA ex rel.
J. J. WILD, M.D., Ph.D.,

Appellant,

vs.

OSCAR R. KNUTSON, Esq., JAMES C. OTIS, Esq., WALTER F. ROGOSHESKE, Esq., C. DONALD PETERSON, Esq., FALLON KELLY, Esq., WENDELL ANDERSON, Esq., JACK DAVIES, Esq., JOHN J. TODD, Esq., HARRY H. MacLAUGHLIN, Esq., and RICHARD E. KLEIN, Esq.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

October Term, 1977
No. 77-644

STATE OF MINNESOTA ex rel.
J. J. WILD, M.D., Ph.D.,

Appellant,

vs.

JAMES C. OTIS, Esquire,

Appellee,

and

STATE OF MINNESOTA ex rel.
J. J. WILD, M.D., Ph.D.,

Appellant,

vs.

OSCAR R. KNUTSON, Esq., JAMES C. OTIS, Esq., WALTER F. ROGOSHESKE, Esq., C. DONALD PETERSON, Esq., FALLON KELLY, Esq., WENDELL ANDERSON, Esq., JACK DAVIES, Esq., JOHN J. TODD, Esq., HARRY H. MacLAUGHLIN, Esq., and RICHARD E. KLEIN, Esq.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

Pursuant to Supreme Court Rule 16(a)-(b), appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Minnesota on the following grounds:

1. The federal question sought to be reviewed was not properly raised or expressly passed on by the Minnesota Supreme Court so that the Court lacks jurisdiction.

2. The question presented is so insubstantial as not to need further argument.

3. The judgment at issue was obviously correct.

QUESTION PRESENTED

May a private citizen initiate criminal proceedings when the appropriate prosecuting attorney refuses to do so?

STATUTE INVOLVED

Inasmuch as the statute here challenged was not set forth and described in the opinion of the Supreme Court of Minnesota, —— Minn. ——, 257 N.W.2d 361 (1977), it is set forth in the Appendix at A-1.[1]

STATEMENT OF THE CASE

This is a direct appeal from a judgment entered on August 12, 1977, by the Supreme Court of Minnesota. The effect of that judgment was to affirm orders of two district courts dismissing criminal complaints which appellant filed against appellees without the approval of the local prosecutors.

[1] In addition, a copy of the slip opinion is attached hereto at A-3. "A" is the abbreviation for the appendix. An appendix was necessary because appellant has not as yet requested the Clerk of the Supreme Court of Minnesota to file the record with the Court.

On November 17, 1975, appellant filed a *pro se* summons and complaint in Hennepin County District Court against James C. Otis, an Associate Justice of the Minnesota Supreme Court. The complaint alleged that Justice Otis (an appellee herein) had violated the criminal law against perjury (Minn. Stat. § 609.48 (1974))[2] and prayed that he "be adjudged guilty . . . (and) sentenced in accordance with law. . . ."[3] Upon appellee's motion, the matter was dismissed on February 26, 1976 (Oleisky, J.).[4]

On February 3, 1976, appellant filed a *pro se* summons and complaint in Ramsey County District Court against Minnesota Supreme Court Justices Otis, Walter Rogosheske, C. Donald Peterson, Fallon Kelly, John Todd; former Justice Harry MacLaughlin; retired Chief Justice Oscar Knutson; former Supreme Court Administrator Richard Klein; former Governor Wendell Anderson and State Senator Jack Davies. The complaint alleged that the above-named defendants (appellees herein) had violated the criminal laws against (1) conspiracy [Minn. Stat. § 609.175, subd. 2 (1974)] and (2) corruptly influencing legislator [Minn. Stat. § 609.425 (1974)].[5]

[2] Essentially, appellant alleged that Justice Otis testified falsely during the trial of appellant's claim against a non-profit foundation and its executive director. The details of this "acrimonious and protracted" trial are fully described in Wild v. Rarig, —— Minn. ——, 234 N.W.2d 775 (1975). It was after appellant's verdict and award of $16,277,300 was reversed and remanded for a new trial that he attempted to file criminal charges against appellees.

[3] A-23.

[4] A-41.

[5] Essentially, plaintiff alleges that defendants "conspired" to secure the passage of an amendment to Minn. Stat. § 2.724, subd. 2 (1974). That amendment (enacted as Minn. Laws 1973, ch. 18, § 1) provides:

> Any number of justices may disqualify themselves from hearing and considering a case, in which event the supreme court may assign temporarily a retired justice of the supreme court or a district judge to hear and consider the case in place of each disqualified justice.

As in the Otis case, appellant prayed that each defendant "be adjudged guilty . . . (and) sentenced in accordance with law . . . ."[6] Upon appellees' motion, the matter was dismissed on April 20, 1976 (Abrahamson, J.).[7] Appropriate judgments were entered in each county.

On May 19, 1976, appellant noticed an appeal from the Ramsey County judgment and on May 25, 1976, noticed an appeal from the Hennepin County judgment. Upon the motions of the parties, the two appeals were consolidated. The arguments were presented exclusively by written briefs.

Prior to filing his summons and complaint in both cases, appellant tried to get the county attorney who had jurisdiction to approve a criminal complaint against the named defendant(s).[8] Both prosecutors refused. Furthermore, he attempted to convince first the Hennepin County and then the Ramsey County Grand Juries to issue indictments or reports.[9] The Hennepin County Grand Jury permitted appellant to appear and likewise took no formal action.[10] The Ramsey County Grand Jury refused to let appellant appear and likewise took no formal action.[11]

It was after appellant's demands were refused by the duly-elected prosecutorial officials that he sought to bring his alleged criminal charges in civil actions. Both courts dismissed for lack of jurisdiction, ruling that a private party cannot formally institute criminal proceedings. It is the decision of the Minnesota Supreme Court upholding these orders which appellant now challenges.

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[6] A-39.
[7] A-46.
[8] A-10, A-26.
[9] A-10-11, A-26-27.
[10] A-10-11.
[11] A-26-27.

ARGUMENT

I. BECAUSE THE CONSTITUTIONAL VALIDITY OF A STATE STATUTE WAS NOT PROPERLY RAISED OR EXPRESSLY PASSED ON BY THE SUPREME COURT OF MINNESOTA, THE COURT DOES NOT HAVE JURISDICTION OVER THIS DIRECT APPEAL.

Appellant's assertion that this Court has jurisdiction over his appeal is primarily founded on the provisions of 28 U.S.C. § 1257(2). However, as will be demonstrated, his reliance on this statute is misplaced; his attempted direct appeal should be dismissed because the requirements of that statute have not been met.

Section 1257(2) provides that the Court may review by direct appeal a judgment of a state supreme court where a state statute has been upheld against a challenge to its validity.[12] The "validity" in question is measured by the requirements of the federal Constitution and laws of the United States, not state law.[13] Thus, it is necessary to examine both the statute which appellant claims to have challenged in the appellate court, and that court's opinion.

In his Jurisdictional Statement appellant states:

> (b) Jurisdiction is invoked on the following grounds:
>
> (i) The appeal is from the Judgment of the Minnesota Supreme Court that a private citizen may not com-

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[12] 28 U.S.C. § 1257(2) provides in relevant part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . .
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

[13] *Id.*

> mence and maintain a private prosecution for crimes when the prosecuting attorney refuses to prosecute. *The said Judgment of the Minnesota Supreme Court draws into question the validity of a state statute authorizing the Minnesota Supreme Court to establish and enforce Rules of Criminal Procedure . . . .*

Appellant's Jurisdictional Statement at 2 (emphasis added). Subsequently, he specifies that this statute is:

> (v) Chapter 250, Laws of Minnesota, 1971, as amended by Chapter 390, Laws of Minnesota, 1974 (M.S.A. 480.059). . . .

Id. at 6.

This is the first time appellant has ever challenged the validity of that statute. An examination of the brief and appendix which appellant filed in the state appellate court reveals that he challenged no legislative enactment, much less Minn. Stat. § 480.059 (1974).[14] In fact, referring to his basic claim that he has a common law right to institute criminal prosecutions, appellant stated without qualification:

> . . . our State Constitution contains no provision negating this ancient right; rather, it affirms it unequivocally. . . .
>
> Nor has the Minnesota Legislature enacted any law abridging this great substantive right. Quite the contrary, the legislature has recognized the right. . . .

Appellant's Jurisdiction Statement at 22 (citations omitted).

In light of this argument, it is not too surprising that the Supreme Court of Minnesota did not pass on the constitutional

[14] Minn. Stat. § 480.059 (1974) is reproduced in the Appendix at A-1-2.

validity of Minn. Stat. § 480.059 (1974). In fact, the Court's opinion is completely devoid of any reference to that statute.

Therefore, because appellant did not dispute, and the appellate court did not rule, on the constitutional validity of the statute appellant now seeks to challenge, he may not bring a direct appeal under the provisions of 28 U.S.C. 1257(2). The requisite state-court litigation over the federal constitutionality of the state statute has not taken place. As a necessary result, jurisdiction is clearly lacking and the appeal should be dismissed.

II. THIS CASE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND, IN ANY EVENT, THE DECISION THAT PRIVATE PROSECUTIONS ARE NOT PERMITTED WAS CLEARLY CORRECT.

A. MINNESOTA RULES OF CRIMINAL PROCEDURE DO NOT PERMIT PRIVATE PROSECUTIONS.

The criminal jurisdiction of the courts of Minnesota is limited by the procedural requirements of the Minnesota Rules of Criminal Procedure.[15] These rules reflect the rudiments of due process and supersede any conflicting statutes, with the exception of certain statutes expressly preserved.[16] It is absolutely clear under these rules that a private citizen cannot institute criminal proceedings and Minnesota courts have no jurisdiction to consider purported private prosecutions.

[15] Minn. Stat. § 480.059, subd. 1 (1974) provides that:

> The supreme court shall have the power to regulate the pleadings, practice, procedure, and the forms thereof in criminal actions in all courts of this state, by rules promulgated by it from time to time. Such rules shall not abridge, enlarge, or modify the substantive rights of any person.

[16] *See* Minn. Stat. § 480.059, subd. 7 (1974), at A-2.

Minn. R. Crim. P. 17.01[17] provides that offenses under state law are to be prosecuted by indictment or by complaint as provided in Minn. R. Crim. P. 2. Rule 2.02 expressly provides that prosecutions can be initiated by complaint only with the approval of designated authorities. The rule states:

> A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed.

The purported criminal complaints in this action plainly failed to meet this jurisdictional requirement. In each case, the appropriate county attorney refused to approve a criminal complaint.[18] Therefore, appellant's "complaints" were of no effect whatever and could not vest the district courts with jurisdiction over the subject matter or the persons of respondents.[19] The provisions of Rule 2.02 required the Supreme

[17] Minn. R. Crim. P. 17.01 provides, in relevant part, as follows:

> An offense which may be punished by life imprisonment shall be prosecuted by indictment. Any other offense defined by state law may be prosecuted by indictment or by a complaint as provided in Rule 2. Misdemeanors may also be prosecuted by tab charge.

[18] *See* appellant's Complaints, "General Allegations," at A-10, A-26.

[19] Both county attorneys have been available at all relevant times; therefore, the exception to prior prosecutorial approval does not apply and, indeed, appellant does not assert it.

Court of Minnesota to affirm the orders of the district courts.[20]

B. STATE AND FEDERAL JUDICIAL DECISIONS RECOGNIZE THAT PRIVATE CITIZENS CANNOT INITIATE CRIMINAL PROCEEDINGS.

Abundant judicial authority supports the unqualified mandate of Rule 2.02 and the opinion of the Supreme Court of Minnesota here appealed. Both state and federal courts have consistently and unequivocally recognized that criminal actions cannot be commenced by private individuals. *See, e.g., People v. Municipal Court for Ventura Judicial District*, 27 Ca. App. 3d 193, 103 Cal. Rptr. 645, 66 A.L.R.3d 717 (1972); *Pugach v. Klein*, 193 F. Supp. 630 (S.D.N.Y. 1961).

People v. Municipal Court for Ventura Judicial District, supra, was an appeal from the issuance of a writ of mandate commanding a municipal court to refrain from acting upon criminal complaints which, like those here, were filed by a private citizen and not approved by the prosecuting attorney. The court expressly rejected the argument that a private citizen has authority to institute criminal proceedings, noting first that such a "right" would serve only to create a

> . . . potential for permitting any person in the name of the People of the State of California to redress a personal

[20] Appellant points to the following statement in the Comment to Rule 2 as evidence that Rule 2.02 does not govern the present case:

> Rule 2.02 leaves to other laws the question of the available remedy when a local prosecutor refuses to approve a complaint.

Appellant's Jurisdictional Statement at 14. This statement is a recognition of the procedure provided in Minn. Stat. § 8.01 (1974) which permits the Governor to appoint the Attorney General to prosecute crimes. It may also simply recognize that events underlying a rejected criminal complaint may give rise to a civil cause of action.

grievance by way of a criminal prosecution against his adversary.

103 Cal. Rptr. at 651. The Court then held:

> The complaint filed by Pellegrino against Bishop without the district attorney's authorization were nullities. The municipal court lacked discretion and in fact jurisdiction to do anything in the matter except to dismiss.

103 Cal. Rptr. at 655.

The holding of the court in *People v. Municipal Court for Ventura Judicial District, supra*, and its underlying rationale are directly applicable here, as is the holding in *State ex rel. Freed v. Martin County Circuit Court*, 214 Ind. 152, 14 N.E.2d 910 (1938). There, the Supreme Court of Indiana considered statutes which, like the Minnesota Rules, required criminal prosecutions to be initiated by indictment or with the approval of the prosecuting attorney. The court held flatly that:

> Criminal prosecutions cannot be instituted by private individuals. . . . Jurisdiction to approve, and thus make possible, the prosecution of criminal actions lies with the grand jury or the prosecuting attorney, and not elsewhere.

214 Ind. at 154. 14 N.E.2d at 910-911. *See also, e.g., State v. Schottenstein*, 23 O. Ops. 2d 93, 188 N.E.2d 217 (1963); *State ex rel. Johnson v. White*, 225 Ind. 602, 77 N.E.2d 298 (1948).

These state court decisions are in complete accordance with those of the federal courts. *See, e.g., Powell v. Katzebach*, 359 F.2d 234 (D.C. Cir. 1965), *cert. denied*, 384 U.S. 906 (1966); *Keenan v. McGrath*, 328 F.2d 610 (1st Cir. 1964); *United States v. Panza*, 381 F. Supp. 1133 (W.D. Pa. 1974); *Moses v. Kennedy*, 219 F. Supp. 762 (D.D.C. 1963); *Pugach v. Klein*, 193 F. Supp. 630 (S.D.N.Y. 1961); *See also Confiscation Cases*, 74 U.S. 454 (1869).

Thus, a private individual has no power whatever to institute criminal proceedings.[21] The "complaints" which appellant filed in this matter are nullities, and this Court should affirm the decision of the Supreme Court of Minnesota.

C. DUE PROCESS OF LAW REQUIRES THAT CRIMINAL COMPLAINTS BE APPROVED BY THE PROSECUTING ATTORNEY.

The requirement that criminal complaints be approved by the appropriate prosecuting attorney arises not only from Rule 2.02 but also from the due process provisions of the United State and Minnesota Constitutions.[22]

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[21] Nor can a private individual seek to enforce criminal statutes through a civil action. Bass Angler Sportsman Society v. United States Steel Corp., 324 F. Supp. 412 (S.D. Ala.), *aff'd.*, 447 F.2d 1304 (5th Cir. 1971). Thus, even had appellant undertaken to file civil actions containing the allegations of his purported criminal complaints, no claim for relief would have been stated.

It should also be noted that in 1973 appellant commenced a federal civil action against the Justices of the Minnesota Supreme Court and others alleging the unconstitutionality of Minn. Laws 1973, ch. 18, § 1. The Court upheld the statute's validity. *See*, Wild v. Knutson, et al., No. 4-73-473 (D. Minn. December 21, 1973, and January 9, 1974), *aff'd.*, No. 74-1137 (8th Cir. April 22, 1974) (unreported opinion).

[22] United States Constitution, Amend. XIV; Minnesota Constitution, art. I, § 7, which provides:

> Due process; prosecutions; double jeopardy; self-incrimination; bail; habeas corpus. No person shall be held to answer for a criminal offense without due process of law, and no person shall be put twice in jeopardy of punishment for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law. All persons before conviction shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great. The privilege of the writ of habeas corpus shall not be suspended unless the public safety requires it in case of rebellion or invasion.

The prosecutor's function in screening potential criminal cases is a major safeguard against unfounded prosecutions. The requirement that the prosecutor approve a complaint is designed

> to protect citizens against criminal actions until the charges are investigated and the prosecution approved by the officer who is by law vested with jurisdiction to act for the state.

State ex rel. Freed v. Martin County Circuit Court, 214 Ind. 152, 154, 14 N.E.2d 910, 911 (1938).

To allow citizens to bring private prosecutions, said the court in *Keenan v. McGrath*, 328 F.2d 610, 611 (1st Cir. 1964),

> . . . would be to provide a means to circumvent the legal safeguards provided for persons accused of crime, such as arrest by an officer on probable cause or pursuant to a warrant, prompt presentment for preliminary examination by a United States Commissioner or other officer empowered to commit persons charged with offenses against the United States, and, in this case by a grand jury.

Accord, People v. Municipal Court for Ventura Judicial District, 27 Ca. App. 3d 193, 103 Cal. Rptr. 645, 66 A.L.R.3d 717 (1972). Therefore, considerations of due process of law ought to prohibit private persons from instituting criminal proceedings against another person without the approval and cooperation of the appropriate prosecutor.

D. PRIVATE PROSECUTIONS WOULD BE INCONSISTENT WITH THE CONSTITUTIONAL SEPARATION OF POWERS.

To permit private citizens to initiate prosecutions over the objection of the prosecuting attorney would endanger the constitutional separation of powers. Article III, § 1 of the Minnesota Constitution provides:

> The powers of government shall be divided into three district departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Under Minnesota law, this division of responsibility requires that executive officers be free from judicial control in the performance of their official duties.[23] Prosecuting authorities, in particular, must be accorded complete discretion in initiating prosecutions.[24]

The essence of the prosecutor's discretion is the power to control and, necessarily, to refuse to initiate, criminal proceedings. If a court entertains a private criminal proceeding,

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[23] In an early case it was held that:

> . . . an executive officer of the state is not subject to the control or interference of the judiciary in the performance of duties belonging to him as an executive officer, and that no act done or threatened to be done by him in his official capacity can be brought under judicial control or interference by *mandamus* or injunction.

Secombe v. Kittelson, 29 Minn. 555, 561, 12 N.W. 519, 522 (1882).

[24] Olsen v. State, 287 Minn. 536, 537, 177 N.W.2d 424, 426 (1970). *See also*, State v. Aubol, No. 46753 (Minn. Sup. Ct., filed July 9, 1976), where the Supreme Court of Minnesota issued a writ of mandamus compelling the district court to dismiss an indictment in a case where the district court had at first refused to do so even though a joint motion had been made by the prosecution and defendant.

it is tantamount to ordering the prosecutor to approve a particular complaint. Either step would interfere with the free exercise of the prosecutor's discretion, which is grounded in the Minnesota Constitution.

Consistent with this separation of powers are numerous federal decisions which have held that the enforcement of federal laws is vested exclusively in the executive arm of the government and that neither the courts[25] nor private citizens[26] may control the discretion of federal prosecutors.

Therefore, considerations of separation of powers and necessary prosecutorial discretion dictate that district courts not entertain "complaints" such as appellant's.

E. CONSIDERATIONS OF PUBLIC POLICY CALL FOR AFFIRMANCE OF THE DECISION OF THE SUPREME COURT OF MINNESOTA.

A prosecuting attorney cannot disregard the law or close his eyes to the crimes of the powerful or powerless. It does not follow, however, that the way to avoid partiality in the enforcement of law is to entrust prosecutions to disgrunted complainants who may be motivated by personal malice. Indeed, there are compelling policy arguments against recognition of private prosecutions.

Our society long ago entrusted prosecutions to public officials, officials accountable to the public and charged with

[25] Newman v. United States, 283 F.2d 479 (D.C.C. 1967); United States v. Cox, 342 F.2d 167 (5th Cir. 1965), *cert. denied*, 381 U.S. 935; Bass Anglers Sportsman's Society v. Scholze Tannery, Inc., 329 F. Supp. 339 (E.D. Tenn. 1971); Moses v. Kennedy, 219 F. Supp. 762 (D.D.C. 1963); Pugach v. Klein, 193 F. Supp. 630 (S.D. N.Y. 1961).

[26] Keenan v. McGrath, 328 F.2d 160 (1st Cir. 1964); Bass Anglers Sportsman's Society v. Scholze Tannery, Inc., *supra*; Moses v. Kennedy, *supra*; Pugach v. Klein, *supra*.

seeking justice, not simply convictions. The prosecutor's responsibilities demand integrity, zeal and a conscientious pursuit of the public good. Private actions would defeat these purposes and would subject defendants to irresponsible, frivolous and spiteful prosecutions.

The ABA Project on Standards for Criminal Justice, *The Prosecution Function*, concluded that the prosecutor should have initial and primary responsibility for the decision to prosecute.[27] The commentary to these standards states in part:

> The idea that the criminal law, unlike other branches of the law such as contract and property, is designed to vindicate public rather than private interests is now firmly established. The participation of a responsible public officer in the decision to prosecute and in the prosecution of the charge gives greater assurance that the rights of the accused will be respected .than is the case when the victim controls the process.[28]
>
> . . . .
>
> Whatever may have been feasible under conditions of the past, modern conditions require that the authority to commence criminal proceedings be vested in a professional, trained, responsible public official.[29]

[27] ABA Standards, *The Prosecution Function* (Approved Draft, 1971) § 2.1 provides:
Prosecution authority should be vested in a public official. The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline.
§ 3.4 provides, in relevant part:
(a) The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor.
. . . .
Accord, Comment, Minn. R. Crim. P. 2.02.

[28] ABA Standards, *The Prosecution Function* (Approved Draft, 1971) § 2.1, Commentary at p. 49.

[29] ABA Standards, *The Prosecution Function* (Approved Draft, 1971) § 3.4, Commentary at p. 84.

Surely, these considerations should require rejection of the notion that private citizens can initiate prosecutions.

CONCLUSION

Appellant has failed to properly invoke the jurisdiction of the Court. Furthermore, the question upon which this cause depends is so insubstantial as not to need further argument. This is especially appropriate where the state-court decision is so clearly correct. Thus, either the appeal should be dismissed or the judgment of the Supreme Court of Minnesota affirmed.

Respectfully submitted,

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APPENDIX

480.059 CRIMINAL ACTIONS, PLEADINGS, PRACTICE AND PROCEDURE. Subdivision 1. Rules and regulations. The supreme court shall have the power to regulate the pleadings, practice, procedure, and the forms thereof in criminal actions in all courts of this state, by rules promulgated by it from time to time. Such rules shall not abridge, enlarge, or modify the substantive rights of any person.

Subd. 2. Advisory committee. Before any such rules are adopted the supreme court shall appoint an advisory committee consisting of eight lawyers licensed to practice law in the state and at least two judges of the district court and one judge of a court exercising municipal court jurisdiction to assist the court in considering and preparing such rules.

Subd. 3. Recommendations by judicial council. The judicial council, upon the request of the supreme court or upon its own initiative in accordance with the provisions of chapter 483, may at any time make recommendations to the court concerning such rules.

Subd. 4. Distribution of proposed rules; hearing. Before any such rule is adopted, the supreme court shall distribute copies of the proposed rule to the judiciary and attorneys of the state for their consideration and suggestions and give due consideration to such suggestions as they may submit to the court. The Minnesota state bar association, or a professional judicial organization may file with the court a petition specifying their suggestions concerning any existing or proposed rule and requesting a hearing thereon. The court shall there-

upon grant a hearing thereon within six months after the filing of the petition.

Subd. 5. Rules not in conflict. Any court, other than the supreme court, may adopt rules of court governing its practice; but such rules shall not conflict with the rules promulgated by the supreme court.

Subd. 6. Promulgation. (1) Effective date of rules; publication. All rules promulgated under this section shall be effective at a time fixed by the court and shall be published in the appendix to the official reports of the supreme court and shall be bound therewith. The court shall publish and distribute to the judiciary and attorneys of the state, on or before September 1, 1974, copies of the final version of the rules it intends to adopt. A period of at least 120 days shall be allowed from the date of publication of this final version for the rules to be studied by the judiciary and attorneys of the state prior to the adoption of any of the rules.

(2) Printing, publishing and distributing. The commissioner of administration shall print, publish and distribute copies thereof to the judiciary and attorneys and as required by law.

Subd. 7. Effect upon statutes. Present statutes relating to the pleadings, practice, procedure, and the forms thereof in criminal actions shall be effective until modified or superseded by court rule. If a rule is promulgated pursuant to this section which is in conflict with a statue, the statute shall thereafter be of no force and effect. Notwithstanding any rule, however, the following statutes remain in full force and effect:

(a) Statutes which relate to substantive criminal law, found in sections 611.01 to 611.033, 611.11 to 611.12, and 611.30 to to 611.34 and Laws 1973, Chapter 317;

(b) Statutes which relate to the rights of the accused, found in section 611.01 to 611.033, 611.11 to 611.12, and 611.30 to 611.34 and Laws 1973, Chapter 317;

(c) Statutes which relate to the prevention of crime, found in chapter 625;

(d) Statutes which relate to training, investigation, apprehension, and reports, found in chapter 626;

(e) Statutes which relate to privacy of communications, found in chapter 626A;

(f) Statutes which relate to extradition, detainers, and arrest, found in sections 629.01 to 629.404;

(g) Statutes which relate to judgment and sentence, found in sections 631.20 to 631.21 and 631.40 to 631.51;

(h) Statutes which relate to special rules, evidence, privileges, and witnesses, found in sections 595.02 to 595.025 and chapter 634;

(i) The supreme court shall not have the power to adopt or promulgate any rule requiring less than unanimous verdicts in criminal cases; and

(j) Statutes which relate to the writ of habeas corpus, including but not limited to, sections 589.01 to 589.30 and 484.03.

Whenever, pursuant to this section, the court adopts a rule which conflicts, modifies, or supersedes a statute not enumerated above it shall indicate the statute in the order adopting the rule.

Subd. 8. Right reserved. This section shall not abridge the right of the legislature to enact, modify, or repeal any statute or modify or repeal any rule of the supreme court adopted pursuant thereto.

[*1971 c 250 s 1-8; 1974 c 390 s 1, 3*]

No. 481
Hennepin County
Ramsey County

SHERAN, C. J.
Took no part, OTIS, ROGOSHESKE,
PETERSON, KELLY, TODD,
MacLAUGHLIN, and KNUTSON, JJ.

STATE OF MINNESOTA ex rel.
J. J. WILD, M. D., Ph. D.,
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46898

vs.

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STATE OF MINNESOTA ex rel.
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46882

vs.

OSCAR R. KNUTSON, Esq., et al,
Respondents.

Endorsed
Filed August 12, 1977
John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

1. Appellant judges must decide for themselves whether recusal is required in case in which party claims bias.

2. A private citizen has no authority to commence and maintain private prosecutions for alleged violations of criminal law.

Affirmed.

Considered and decided by Sheran, C. J., and Yetka, Scott, Winton,* and Preece,* JJ., without oral argument.

OPINION

SHERAN, Chief Justice.

These consolidated appeals raise the issue of whether a private citizen may commence and maintain private prosecutions for alleged violations of the criminal law. We hold that he may not.

Prior to commencing the present action, plaintiff, J. J. Wild, requested the county attorneys of Ramsey and Hennepin Counties to approve criminal complaints which he had prepared against defendants, but the respective county attorneys refused to prosecute. Plaintiff then tried unsuccessfully to persuade the grand juries of the two counties to issue indictments. Finally, plaintiff filed complaints himself in an attempt as a private citizen to prosecute defendants.

The complaint against defendants filed in Ramsey County alleged a violation of the criminal laws against conspiracy to commit a crime, Minn. St. 609.175, subd. 2, and corruptly influencing a legislator, § 609.425. The complaint against defendant Mr. Justice James C. Otis in Hennepin County alleged a violation of the criminal law against perjury, § 609.48. The

* Acting as Justice of the Supreme Court by appointment pursuant to Minn. Const. art. 6, § 2, and Minn. St. 2.724, subd. 2.

complaints requested that the named defendants be convicted and sentenced according to law. The respective complaints were dismissed by the district courts of Ramsey and Hennepin Counties, and these appeals from judgments followed.

1. A preliminary issue is presented by the affidavits of prejudice which plaintiff has filed against the special panel of justices considering his appeal.

Section 3.42, and the commentary thereto, of the A. B. A. Standards of Judicial Administration, Standards Relating to Appellate Courts (Approved Draft, 1977), state the appropriate standards and procedures to be followed in the case of challenges such as this:

"3.42 Disqualification of Judges.

"A judge of an appellate court should be subject to disqualification on the grounds set forth in the Code of Judicial Conduct recommended by the American Bar Association, and in any case in which the judgment under review is one by a court in whose decision he participated as judge in a lower court.

"*Commentary*

"An appellate judge should be subject to challenge for cause on the same grounds as a trial judge, and also when an appeal involves a review of his own decision. The most difficult problem concerns the procedure to be employed. As in the challenge of a trial judge, if the challenge is sufficient on its face and any reasonable doubt of the judge's disinterestedness is suggested, the judge may be expected to disqualify himself. If he does not do so, in the case of a trial judge factual issues relating to disqualification should properly be determined by another judge. See § 2.32, Standards Relating to Trial Courts. In the case

of an appellate judge, however, that procedure would subject the judge to decision of his disinterestedness by official peers with whom he may continue to serve in a collegial capacity in deciding the case. Moreover, because an appellate court decides questions of law rather than fact, the question of an appellate judge's 'bias' is often practically indistinguishable from the question of his views on the law, which are not properly subject to disputation through the recusal procedure. Given these complications, it is better that the question of recusal be decided by the judge himself. If he is a judge of an intermediate appellate court, there remains the remedy of appeal from a decision in which he participates; if he is a judge of a supreme court, reliance must be placed on his recognition that a court should not only be disinterested but that it should appear to be so.

"In some jurisdictions, provision for peremptory challenge of a trial judge is permitted. See Commentary to § 2.32(b), Standards Relating to Trial Courts. This procedure is inappropriate in the case of an appellate judge. In the collegial decision-making of an appellate court an individual judge's purely personal views are of less significance than they would be in a trial court and he is subject to collegial restraint should he be inclined to act on them; an appellate judge has few occasions for exercising the broad discretion reposing in a trial judge; and in appellate litigation there is no occasion for the intense personal interaction between the judge and the lawyers and litigants that may occur in a trial court. Moreover, an appellate judge's established views on law and justice, at least up to a point, are a proper element

> of the contribution he makes to the function of an appellate court, particularly in the development of the law. A peremptory challenge might easily be abused to exclude a judge solely because a litigant disagreed with his views."

The three justices of the supreme court and the two district court judges assigned to the hearing of this matter pursuant to Minn. Const. art. 6, § 2, and Minn. St. 2.724, subd. 2, have applied these standards for recusal and have determined that the affidavit of prejudice filed by plaintiff against them is without justification. District Court Judge Warren A. Saetre, originally assigned to consider this case, has recused for personal reasons.

2. As stated earlier, the issue which plaintiff raises in his appeal is whether a private citizen may commence and maintain private prosecutions for alleged violations of the criminal law.

In answering this question, we start with Rule 17.01, Rules of Criminal Procedure. This rule contemplates that felonies are to be prosecuted by either indictment or complaint. The rule does not mention or allude to any right of private citizens to commence and maintain criminal prosecutions privately.

Rule 2.02, Rules of Criminal Procedure, governing prosecution by complaint, provides as follows:

> "A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed."

This rule is in accord with A. B. A. Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function (Approved Draft, 1971), § 2.1, which provides: "The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline."

The comment to Rule 2.02, Rules of Criminal Procedure, states that "Rule 2.02 leaves to other laws the question of the available remedy when a local prosecutor refuses to approve a complaint." One obvious available remedy is for the aggrieved citizen to try to appear before the grand jury and persuade it to indict. While a citizen does not have a right to appear before the grand jury, he is free to attempt to get the grand jury to take action, and under Rule 18.04, Rules of Criminal Procedure, the grand jury can permit an aggrieved citizen to appear as a witness for this purpose. The grand jury under Rules 18.01 and 18.03 consists of 16 to 23 members, randomly selected from a cross section of the county. Permitting citizens to take complaints directly to this body serves as a kind of "safety valve" and has much to commend it. See, commentary to § 2.1 of the A. B. A. Standards Relating to the Prosecution Function.[1]

There are other remedies available to an aggrieved citizen when a prosecutor refuses to commence a prosecution:

(a) Minn. St. 388.12 provides:

> "The judge of any district court may by order entered in the minutes at any term of court appoint an attorney of such court to act as, or in the place of, or to assist, the county attorney at such term, either before the court or

[1] In this case, as we stated earlier, plaintiff tried to get the respective grand juries of Ramsey and Hennepin Counties to indict but was unsuccessful.

> grand jury. The person so appointed shall take the oath required by law of county attorneys and thereupon may perform all his duties at such term of court, but shall receive no compensation where the county attorney is present at such term, except by his consent, and to be paid from his salary."

Arguably, a private citizen could petition the district court for action pursuant to this statute and the court could appoint a special prosecutor if it decided that this was necessary. See, Comment, 65 Yale L. J. 209, 215. See, also, the discussion in the commentary to § 2.1 of the A. B. A. Standards Relating to the Prosecution Function. There may be constitutional objections to this statute, but that is not an issue which we need to decide. We merely cite this statute as one of the possible alternatives available in the case of allegedly unjustified prosecutorial inaction.

(b) Another possible remedy is provided by Minn. St. 8.01, which reads as follows:

> "The attorney general shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil causes of like nature in all other courts of the state whenever, in his opinion, the interests of the state require it. Upon request of the county attorney he shall appear in court in such criminal cases as he shall deem proper. Whenever the governor shall so request, in writing, he shall prosecute any person charged with an indictable offense; and in all such cases he may attend upon the grand jury and exercise the powers of a county attorney."

Under this statute a citizen could appeal to the governor, who then might order the attorney general to commence prosecution.

(c) A third potential remedy is mandamus. The problem with mandamus from the standpoint of an aggrieved citizen is that the decision whether to initiate a particular prosecution is discretionary[2] and therefore normally beyond the scope of mandamus. For a full discussion, see, Note, 13 Am. Crim. L. Rev. 563, 585.

In mentioning these alternatives, we do not mean to recommend them to plaintiff. Rather, we cite them merely to demonstrate that the approach taken in Minnesota is (a) to give the grand jury and the county attorney the authority to commence prosecutions (with each theoretically operating as a check on the unjustified inaction of the other), and (b) to provide safety-valve alternatives for use in extreme cases of prosecutorial inaction.

In arguing that a private citizen has a right to commence and maintain a criminal prosecution, plaintiff makes many of the arguments that are made in the leading law review article on the subject. What plaintiff neglects to mention is that the authors of the comment concluded that legislative authority was needed for a system of permitting private prosecution. Comment, 65 Yale L. J. 209, 233. Further, the model statute provided by the authors of the comment, like Minn. St. 388.12, authorizes appointment by the court of a substitute attorney and does not permit the aggrieved private citizen to prosecute the action himself.

Plaintiff has not cited and we have not found any authority justifying the instant actions. This is not surprising because

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[2] See, State v. Mayhood, —— Minn. ——, 241 N. W. 2d 803 (1976), where we stated that there may be cases where a prosecutor properly may decline to prosecute even where evidence exists which would support a conviction. We in no way imply that the evidence would have supported convictions in this case.

to permit such prosecutions would entail grave danger of vindictive use of the processes of the criminal law and could well lead to chaos in the administration of criminal justice.

We are satisfied that the district courts acted properly in dismissing the attempted prosecutions.

Affirmed.

MR. JUSTICES Otis, Rogosheske, Peterson, Kelly, Todd, MacLaughlin, and Knutson took no part in the consideration or decision of this case.

STATE OF MINNESOTA — IN DISTRICT COURT
County of Hennepin — Fourth Judicial District

STATE OF MINNESOTA ex rel.
J. J. WILD, M.D., Ph. D.,

Plaintiff,

vs.

JAMES C. OTIS, Esq.,

Defendant.

SUMMONS

State of Minnesota To The Above-Named Defendant:

You are hereby summoned and required to serve upon plaintiff an answer to the complaint which is herewith served upon you within twenty (20) days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment will be taken against you for the relief demanded in the complaint and an application will be made for your arrest or that other lawful steps be taken to obtain your appear-

ance in court so that you may be sentenced in accordance with law.

/s/ J. J. WILD, M.D., Ph.D.
Attorney Pro Se
1100 East 36th Street
Minneapolis, Minnesota 55407
Telephone: 721-5915

Dated this 17th day of November, 1975.

(Title of Cause)

COMPLAINT

Comes now the plaintiff and for his cause of action as a citizen of the State of Minnesota, individually and on behalf of all citizens of the state, against the defendant above-named, states and alleges:

GENERAL ALLEGATIONS

I

That at all times mentioned herein, the plaintiff is a resident of the County of Hennepin, State of Minnesota.

II

That the facts contained herein alleging the commission of several counts of perjury were presented to the County Attorney of Hennepin County wherein said alleged perjury took place and the said County Attorney refused to present the evidence to a Grand Jury and refused to accept a complaint. The facts and evidence in support thereof were thereafter personally presented and submitted to the Grand Jury. The foreman of the Grand Jury refused to act on the evidence in any way and refused to issue a report of the Grand Jury's findings. The County Attorney who refused to submit the facts or accept a complaint, acting in conjunction with the foreman

of the Grand Jury, on information and belief, prevented the Grand Jury from acting in accordance with its statutory obligations. That the statute of limitations for these crimes will expire on November 20, 1975, and, unless these criminal proceedings are conducted in accordance with this complaint, the alleged crimes will go unprosecuted and unpunished.

III

That the defendant James C. Otis, Esq., is an Associate Justice of the Supreme Court of the State of Minnesota and a vice president of the Amherst H. Wilder and Minnesota Foundations and board member of said foundations at the time of the acts complained of herein. That said defendant Otis was called to testify in a trial (*Wild v. Rarig, et al*, Hennepin County District Court File No. 633580) wherein the defendants foundations owned 65-million dollars worth of St. Paul Companies stock (also referred to as the St. Paul Fire & Marine Insurance Company in the transcript of said case), the said insurance company carrying a multi-million dollar policy of insurance covering the defendant foundations directly involved in the said litigation. The purpose of said testimony was to elicit malice on the part of the said foundations through the action of the said defendant Otis in statements made to a deceased attorney and in a malpractice case (*Mulder v. Parke Davis, et al*) in which defendant Otis was alleged to have used his high judicial post to libel and prevent the plaintiff herein from serving as an expert witness, said libel being written in a formal decision of the Minnesota Supreme Court after the commencement of the lawsuit (*Wild v. Rarig, et al*) in which the defendant Otis was to testify. The defendant Otis was on the Minnesota Supreme Court for several years prior to his testimony, reaching decisions on cases involving St. Paul Companies without disqualifying himself even though he was instrumental in the management of the insurance company through voting in conjunction with other members of the board of said foundations, 650,000 shares of stock, a block of stock which voted consistently in support of management and was substantially instrumental in the management of the insurance company and the millions of dollars in legal fees and financial and banking fees and benefits involved and, even though defendant Otis personally owned more than $100,000 worth of stock in the St. Paul Companies.

IV

That the defendant Otis wilfully, knowingly and feloniously testified falsely on material matters under oath in the official legal proceedings of the said *Wild v. Rarig, et al*, case, during the afternoon of November 20, 1972, contrary to the peace and dignity of the State of Minnesota and contrary to the statute made and proided, to-wit: Minnesota States Annotated 609.48:

"Subd. 1. Acts Constituting Perjury.

(1) . . . *Whoever makes a false statement which he does not believe to be true* (emphasis supplied) . . . is guilty of perjury . . .

(2) In or for an action, hearing or proceeding of any kind in which the statement is required or authorized by law to be made under oath or affirmation; . . .

Subd. 2. Defenses Not Available.

. . . It is not a defense to a violation of this section that: . . .

(3) The declarant did not know that his statement was material or believed it to be immaterial; or

(4) The statement was not used or, if used, did not affect the proceeding for which it was made; or

(5) The statement was inadmissible under the law of evidence.

Subd. 3. Inconsistent Statements.

When the declarant has made two inconsistent statements under such circumstances that one or the other must be false and not believed by him when made, *it shall be sufficient for conviction under this section, to charge and the jury to find that, without determining which, one or the other of such statements, was false and not believed by the declarant . . .*"

(Emphasis supplied.)

as the same is alleged in Counts I through IX infra.

COUNT ONE

I

Plaintiff realleges General Allegations I through IV.

II

That the defendant Otis testified at page 3292 of the official transcript of *Wild v. Rarig, et al*, supra, as follows:

"Q. Well, it certainly is a general rule in your understanding of the Code of Judicial Ethics which have already been introduced in evidence, it certainly would not put you in a position of being unprejudice(d) if you are participating in the management of a billion-dollar insurance company and yet sitting on the Supreme Court of this state—

A. I don't follow your argument. Are you arguing or—

Q. I am just asking you if you don't feel there is a conflict of interest there?

A. No, I don't.

Q. There is no conflict of interest between your participation in the management of a billion-dollar insurance

company and sitting on the Supreme Court that's constantly passing on cases involving the insurance company?

A. No, there is not. I have nothing to do with the voting of that stock and *I have no interest* except fiduciary interest in the Foundation." (Emphasis supplied)

When in truth and in fact said defendant Otis knew he personally owned over $100,000 worth of stock in the said insurance company.

III

That said falsehood was uttered to cover up the defendant's prejudice, conflict of interest and malice on behalf of himself and the defendants in the *Wild v. Rarig et al*, action against the plaintiff herein. That it was also a device to mislead the jury in said trial into thinking defendant Otis was an objective witness and thus designed to effect the outcome of said case.

COUNT TWO

I

Plaintiff realleges General Allegations I through IV.

II

That the defendant Otis testified at page 3290 of the official transcript of *Wild v. Rarig, et al*, supra, as follows:

"Q. Well, as a matter of fact, did you tell the lawyers in this case (*Mulder v. Parke Davis, et al*—supplied) that you voted that amount of stock (650,000 shares) and that you had that direct connection with the St. Paul Companies?

A. They were not involved in this suit. I do not sit on Fire & Marine causes for that very reason."

Page 3291

"Q. (Mr. Williams) Justice Otis, I don't wish to embarass you but can you tell me what cases you actually disqualified yourself from sitting on?

A. I really can't. Everyone in which Fire & Marine is the insurer I have not sat for the very reason that you are discussing."

Also at pages 3290 and 3291:

"Q. Mr. Justice, I am not arguing with you. But I am only going by what was told me by Mr. Tierney (the lawyer for plaintiff in the Mulder v. Mork, et al case—supplied) and I called him on the phone and he indicated to me that the doctor in that case was insured by St. Paul Fire & Marine.

A. If he was, it was not called to my attention because I never sit on Fire & Marine cases. And as a matter of fact, if I may just add this, Mr. Williams, if you recall, I wrote in my opinion that the deceased lady was entitled to have her case retried against *Fire & Marine*." (Emphasis supplied.)

When in truth and fact defendant Otis knew he had never disqualified himself from a case involving the St. Paul Insurance Companies and further, after stating that the St. Paul Fire & Marine was not involved in the case, he continued on to say that he had granted a new trial against the St. Paul Companies.

COUNT THREE

I

Plaintiff realleges General Allegations I through IV.

II

That the defendant Otis testified at pages 3291 and 3292 of the official transcript of Wild v. Rarig, et al, supra, as follows:

"A. . . . I knew that I voted their stock . . ." (Referring to 650,000 shares of St. Paul Companies stock) Page 3292:

"A. . . . I have nothing to do with the voting of that stock." (Referring to St. Paul Companies stock.)

III

That defendant Otis made said inconsistent statements willfully and knowingly in violation of the provisions of M.S.A. 609.48, Subd. 3, cited supra.

COUNT FOUR

I

Plaintiff realleges General Allegations I through IV.

II

That defendant Otis testified at page 3297 of the official transcript of Wild v. Rarig, et al, supra, as follows:

"Q. (Mr. Williams) My question is, sir, that you do understand—(3297) the canons of judicial ethics do not allow by implication fair and clear to a member of the Supreme Court either in this state or any other state to be instrumental in the management of an insurance company.

A. I'm not instrumental in the management of any insurance company."

When in truth and fact the defendant and the other five members of the Wilder Foundation Board substantially control and direct the management through their voting of 650,000 shares of St. Paul Companies' stock thereby directly controlling the awarding of millions of dollars in legal fees to defense lawyers and millions of dollars in financial and interest benefits to the banking community and other financial institutions.

COUNT FIVE

I

Plaintiff realleges General Allegations I through IV.

II

That the defendant Otis testified at page 3306 of the official transcript of Wild v. Rarig, et al, supra, as follows:

"Q. It does tend to indicate that you talk about your cases outside the Courtroom.

A. Only where it affects the fiduciary of which I am a part."

That said admission is contrary to Minnesota Statutes Annotated 609.515 and contrary to the defendant's denial of going outside the record in the Mulder v. Mork, Parke Davis et al, case as the defendant stated at page 3288 of the official transcript of Wild v. Rarig, et al, supra, that he had read from the recors that Dr. Wild (plaintiff herein) had had a "clash of personalities" with the judge in the Mulder case and had acted with "levity", said case involving the unfortunate death of a medical patient. That said information does not appear in the record of the said Mulder v. Parke Davis case and the defendant's testimony therein was an attempt to hide said defendant's malice against the plaintiff and further to hide defendant's own prior criminal conduct. See also defendant's denial at page 3305 of the official transcript of Wild v. Rarig et al, supra.

COUNT SIX

I

Plaintiff realleges General Allegations I through IV.

II

That defendant Otis testified at page 3295 of the official transcript of Wild v. Rarig, et al, supra, concerning his denial of prejudice as follows:

"Q. . . . and what I am trying to get at, Justice Otis, you thought before you even took this case on (Mulder v. Parke Davis, et al—ours) that you probably were strongly prejudiced against Dr. Wild, didn't you?

A. I did not."

And in the next question the falsity of this prior answer is established:

"Q. Then why did you bring it up to the counsel before you took the case and asked for their approval? I thought that's what you said you had done.

A. I did. I felt that I owed it to the lawyers to disclose the facts that I was being sued by Dr. Wild."

COUNT SEVEN

I

Plaintiff realleges General Allegations I through IV.

II

That the defendant Otis testified at page 3290 of the official transcript of Wild v. Rarig, et al, supra, in response to a question with reference to the St. Paul Companies involvement in the Mulder v. Parke Davis case:

"A. They are not involved in this suit. I do not sit on Fire & Marine cases for that very reason."

When in truth and fact defendant Otis admitted by clear implication that this statement was false:

"A. I wrote in my opinion that the deceased lady was entitled to have her case retried against Fire & Marine."

Defendant Otis knew the St. Paul Companies (Fire & Marine)

was involved in the Mulder v. Parke Davis case and therefore, testified falsely, knowingly and on a material issue.

COUNT EIGHT

I

Plaintiff realleges General Allegations I through IV.

II

That the defendant Otis testified at pages 3300 and 3301 of the official transcript of Wild v. Rarig, et al, supra, as follows:

"Q. (Mr. Williams) Well, I have no influence with the Supreme Court. For instance, I'm not with the St. Paul Fire & Marine Insurance Company with one of members of the Court (3301) having 650,000 shares to participate in voting. Now, you honestly think I and my client have the same rights before your Supreme Court as the St. Paul Fire & Marine Insurance Company?

A. I do."

III

Defendant Otis' denial of prejudice and special interest are absurd falsities in view of the facts as contained and set forth herein. From the earliest times in English Common Law and in American Law it is perjury ". . . for a witness to swear that he *thinks* or *believes* a certain fact when he thinks or believes the contrary." Ft.Nt. 84, *Rex v. Pedley*, 1 Leach, 327; *Reg. v. Schlesinger*, 10 Q.B. 670; *Com. v. Edison*, (ky.) 9 S.W. 161 (Miller on Criminal Law, West Publishing Co. 1934, Chapter 17, Section 160, Page 470.)

COUNT NINE

I

Plaintiff realleges General Allegations I through IV.

II

Defendant testified at page 3292 of the official transcript of Wild v. Rarig, et al, supra, as follows:

"Q. I am just asking you if you don't feel that there is a conflict of interest there?

A. No, I don't."

III

Plaintiff realleges Paragraph III of COUNT EIGHT.

WHEREFORE, Plaintiff prays that the defendant herein be adjudged guilty on each count above-named and that he be sentenced in accordance with law as the same is prescribed by Minnesota Statutes for the crimes of perjury.

/s/J. J. WILD, M.D., Ph. D.
Attorney Pro Se
1100 East 36th Street
Minneapolis, Minnesota 55407
Telephone: 721-5915

Dated this 17th day of November, 1975.

State of Minnesota
County of Hennepin—ss.

J. J. WILD, M.D., Ph.D., being first duly sworn, on oath deposes and says: That he is the plaintiff-relator in the foregoing Summons and Complaint; That he has read the same and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated on information and belief and, as to such matters, he believes them to be as alleged.

/s/J. J. WILD, M.D., Ph. D.

Subscribed and sworn to before me this 17th day of November, 1975. — /s/ M. Jacquelin Stevenson, Notary Public, Hennepin County, Minn. My commission expires Dec. 17, 1979.

STATE OF MINNESOTA — IN DISTRICT COURT
County of Ramsey — Second Judicial District

STATE OF MINNESOTA ex rel.
J. J. WILD, M.D., Ph.D.,

Plaintiff,

vs.

OSCAR R. KNUTSON, Esq., JAMES C. OTIS, Esq., WALTER F. ROGOSHESKE, Esq., C. DONALD PETERSON, Esq., FALLON KELLY, Esq., WENDELL ANDERSON, Esq., JACK DAVIES, Esq., JOHN J. RODD, Esq., HARRY H. MacLAUGHLIN, Esq., and RICHARD E. KLEIN, Esq.,

Defendants.

SUMMONS

State of Minnesota To The Above-Named Defendants and Each of Them:

You and each of you are hereby summoned and required to serve upon plaintiff an answer to the complaint which is herewith served upon you within twenty (20) days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment will be taken against you for the relief demanded in the complaint and an application will be made for your arrest or that other lawful steps be taken to obtain your appearance in court so that you may be sentenced in accordance with law.

/s/J. J. WILD, M.D., Ph.D.
Attorney Pro Se
1100 East 36th Street
Minneapolis, Minnesota 55407
Telephone: 721-5915

Dated this 3rd day of February, 1976.

STATE OF MINNESOTA — IN DISTRICT COURT
County of Ramsey — Second Judicial District

(Title of Cause.)

COMPLAINT

Comes now the plaintiff and for his cause of action as a citizen of the State of Minnesota, individually and on behalf of all citizens of the state, against the defendants above-named and each of them, states and alleges:

GENERAL ALLEGATIONS

I

That at all times mentioned herein the plaintiff is a resident of the County of Hennepin, State of Minnesota.

II

That the facts herein contained alleging the commission of the crimes of "corruptly influencing legislator" and "conspiracy to commit crime", as the same are defined in Minnesota Statutes Annotated 609.425, 609.175 (subd. 2) and 609.05, were presented or offered to the County Attorney of Ramsey County wherein the said alleged crimes took place. The Ramsey County Attorney arbitrarily refused to accept and prosecute the complaint. The plaintiff thereafter requested that he be allowed to appear before the Grand Jury of Ramsey County. This right was denied. The Grand Jury and the County Attorney refused to conduct an investigation, refused to act on the evidence presented or offered and did not issue a report of any nature. The County Attorney who refused to accept a complaint or investigate this matter, acting in conjunction with the foremen of the Grand Juries involved, on information and belief, prevented the said Grand Juries from acting in accordance with their statutory responsibilities. That

the Statute of Limitations for these crimes will probably expire on February 5, 1976, and certainly no later than March 9, 1976. Therefore, unless these criminal proceedings are conducted in accordance with this complaint, the alleged crimes will go unprosecuted and unpunished.

III

That at all times mentioned herein, the defendant Oscar R. Knutson was the Chief Justice of the Minnesota Supreme Court; the defendants Otis, Rogosheske, Peterson, Kelly, Todd and MacLaughlin were Associate Justices of the Minnesota Supreme Court; the defendant Wendell Anderson was the Governor of the State of Minnesota; the defendant Klein was the Administrative Assistant of the Minnesota Supreme Court, acting under the direction and with the express authority of the members of the Minnesota Supreme Court as delineated in this paragraph; and, the defendant Davies was a member of the Senate of the State of Minnesota Legislature and chairman of the Senate Judiciary Committee. That each of the defendants is also an attorney at law, professionally educated and legally qualified and admitted to the practice of law in the State of Minnesota.

COUNT ONE

I

Plaintiff realleges General Allegations I, II and III.

II

That commencing on or about the 19th day of January, 1973, and continuing up to and including the 9th day of March, 1973, in the City of St. Paul, County of Ramsey, State of Minnesota and within the jurisdiction of this Court, one

Oscar R. Knutson, one James C. Otis, one Walter F. Rogosheske, one C. Donald Peterson, one Fallon Kelly,

one Wendell Anderson, one Jack Davies, one John J. Todd, one Harry H. MacLaughlin and one Richard E. Klein hereinafter referred to as defendant, did willfully, wrongfully and unlawfully conspire, confederate and agree with each other to corruptly influence members of the Minnesota State Legislature by willfully, wrongfully and unlawfully and corruptly influencing the vote and performance of duties of members of the Legislature of the State of Minnesota, to-wit: the members of the Senate Subcommittee on Judicial Administration, the Senate Committee on the Judiciary and the House of Representatives Judiciary Committee, including but not limited to, the following: Senator James Lord, Senator Robert Tennessen, Senator Howard Knutson, Representative Ernest Lindstrom, Representative Julian Hook and Representative Bruce Vento, then and there being duly elected, qualified and acting senators and representatives from their respective districts, by corrupt deception and corrupt concealment of the facts from the aforesaid legislators in and as part of the Minnesota Supreme Court's recommendation and sponsorship of the legislation involved herein, including the following:

A. Concealmen—thedefendants and each of them, acting personally and through defendants Klein and Davies, did unlawfully and feloniously conceal:

1. The true nature and extent of the influence on the Minnesota Supreme Court of the St. Paul Companies and the Amherst Wilder Foundation inducing the Minnesota Supreme Court to falsely sponsor the legislation involved herein as routine judicial administration, to-wit: as delineated below.

2. The true nature and extent of the private financial interest in the proposed legislation of the St. Paul Companies and the Amherst Wilder Foundation inducing the Minnesota

Supreme Court to falsely sponsor the legislation involved herein as routine judicial administration, to-wit: as delineated below.

3. The true nature and relevance of the legislation to specific pending litigation, also inducing the Minnesota Supreme Court to sponsor the bills as routine judicial administration, to-wit: Wild v. Rarig, Amherst Wilder Foundation and Minnesota Foundation, to-wit: as delineated below.

4. The true nature and relevance of the legislation to the private financial interests of members of the Minnesota Supreme Court, to-wit:

a. Defendant Otis' substantial personal ownership of stock in the St. Paul Companies;

b. Defendant Otis' position as a Vice President and board member of Amherst Wilder Foundation and Minnesota Foundation, defendants in Wild v. Rarig, Amherst Wilder and Minnesota Foundation;

c. The Supreme Court's interest in protecting the assets of Wilder as "visitors" of that organization (defined as protectors of [Wilder's] assets);

d. Defendant Justice Otis (as official and board member of Wilder);

e. Amherst Wilder's interest of over 65-million dollars (and as Visitors, the other defendant Justices of the Supreme Court) in protecting the assets of the St. Paul Insurance Companies;

f. Justice Otis' voting with other board members on behalf of Wilder Foundation, of over 650,000 shares of St. Paul Companies' stock;

g. That, therefore, Wilder, in effect, exercises substantial control over the St. Paul Companies (large insurance group

involved as well with other cases and appearing regularly before the said Supreme Court, said cases directly concerned with the financial interests of the said St. Paul Companies;

h. Therefore, Wilder, its officers, defendant Otis and Visitor-Trustees Knutson, Rogosheske, Paterson, Kelly, Todd and MacLaughlin, have personal private interests in protecting the assets of St. Paul Companies as well as those of Amherst Wilder;

i. That defendant Justice Otis had in fact testified in the relevant pending litigation (i.e., Wild v. Rarig, Wilder, and Minnesota Foundations);

j. That by allowing the Supreme Court to appoint its own replacements in the pending litigation, the defendant-Justices of the Supreme Court herein could avoid public responsibility and exposure for their conflicts of interest, yet, still control the outcome of the appeal for their own benefits and the benefits of the St. Paul Companies and Amherst Wilder;

k. That there would probably be, and was, an appeal to the Minnesota Supreme Court in the Wild case of an over 16-million dollar verdict which would be in fact an appeal of the Supreme Court's own case to itself;

l. Affidavits of prejudice would, under the facts, undoubtedly be filed, and were filed, (including the personal associations of the Supreme Court members), which would and did require the entire court to disqualify itself; and,

m. That an appeal in the Wild case would, in effect, amount to the Supreme Court passing on its own appeal, and, therefore, the Court's appointing its own replacements would be unfair.

5. Did not disclose to the legislature the ethical, legal and constitutional difficulty and improprieties in allowing a dis-

qualified (i.e., prejudiced or personally interested), judge to appoint his own replacement and how this was minimized in the prior constitutional provisions by having the Governor or Lt. Governor appoint their replacements in the event of disqualification of the entire Supreme Court or a majority of its members.

6. Nature and extent district court judges are dependent upon the goodwill of Supreme Court both statutorily and situationally, e.g., (a) assignments after retirement for additional income, and, (b) Pro tempore assignments to serve on the Supreme Court when no disqualification is involved.

7. Did not disclose that the governor and lt. governor powers of appointment for disqualified judges had been taken from them in a recent amendment to the Minnesota Constitution where this provision was hidden from the voters (people) on the ballot.

B. Deception—the defendants and each of them acting personally and through the defendants Klein and Davies did unlawfully and feloniously deceive the aforesaid legislators as follows:

1. Represented that allowing the disqualified judges to appoint their own replacements was only to reestablish an old constitutional provisions where, in truth and fact, the governor or the lt. governor appointed the Supreme Court temporary replacements when a majority of the justices were disqualified under the old Constitution for over 75 years.

2. Represented that the legislation (to-wit: House File 430, Senate File 3405, Chapter 18, Laws 1973), was merely routine pro froma judicial administration legislation as an aid to concealing the true purpose of the bill and what it was really designed to do, to-wit:

a. Allow the Supreme Court to control its own appeal;

b. To protect the assets of the Amherst Wilder Foundation and the St. Paul (Insurance) Companies;

c. To prevent public hearings on the bills; and,

d. To prevent Dr. Wild or his lawyers from appearing before the committees and being instrumental in getting fair and constitutional legislation passed, i.e., legislation that would insure a fair and impartial appeal panel, not one that would allow the personally-involved Supreme Court to control its own appeal all with the intent then and there entertained by the defendants and each of them to thereby corruptly influence the said legislators as designated above in respect to their vote and performance of their duty in this respect, to-wit: to vote for, recommend for passage and to pass House File No. 430 and Senate File No. 3405 in hasty and ill-considered fashion, without public hearing and notice to interested citizens and adequate and proper consideration by the said legislators of the ramifications of the legislation by the defendants presenting said bills. The defendants employed the false and fraudulent misrepresentation that the bills were routine judicial administration when, in truth and fact, the said legislation was fraudulently designed to allow the regular Supreme Court to control their own appeal as aforestated and to continue control of any other appeal when the Court or its members may be financially or otherwise personally interested by allowing the disqualified judges to appoint their own replacements at their personal discretion, all contrary to M.S.A. 609.425.

3. In furtherance of said conspiracy as aforesaid, the defendants and each of them, all aiding and abetting and criminally conspiring with each other and as part of a common

cause, purpose and design as aforestated, did direct the Supreme Court Administrator, defendant Klein, and did procure the defendant Davies to appear before the State Legislative Committee as aforestated, all contrary to M.S.A. 609.05:

"609.05—Liability for crimes of another

Subdivision 1. A person is criminally liable for a crime committed by another if he intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.

Subd. 2. A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the intended crime if reasonably forseeable by him as a probable consequence of committing or attempting to commit the crime intended.

. . .

Subd. 4. A person liable under this section may be charged with and convicted of the crime although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act. Laws 1963, c. 753."

to-wit: the defendant Klein in the company of the defendant Davies and then and there being aided, advised, counseled and conspiring with the said defendant Davies, as well as being aided, advised, counselled and conspiring with the other defendants herein, did appear with the defendant Davies before the Senate Sub-committee on Judicial Administration on February 6, 1973, and defendant Klein did appear before the House Committee on the Judiciary on February 8, 1973, and the defendant Davies did appear before the Senate Judiciary Committee at or about the same time. Each of them as part of the

conspiracy alleged herein then and there did, by deception and concealment of facts as alleged above, corruptly influence said legislators contrary to M.S.A. 609.425, and did procure the passage of the aforesaid legislation allowing the disqualified Supreme Court Justices to appoint their own replacements at their own discretion as a direct result of said willful, wrongful and unlawful conspiracy contrary to M.S.A. 609.175:

"609.175 Conspiracy

. . .

Subd. 2. To commit crime. Whoever conspires with another to commit a crime and in furtherance of the conspiracy one or more of the parties does some overt act in furtherance of such conspiracy may be sentenced as follows:

. . .

(3) If the crime intended is any other felony or a gross misdemeanor, to imprisonment or to payment of a fine of not more than one half the imprisonment or fine provided for that felony or gross misdemeanor or both.

. . ."

COUNT TWO

I

Plaintiff realleges General Allegations I, II and III and all of the Count One, to-wit: Paragraphs I and II inclusive.

II

That the defendants and each of them aiding, advising, hiring, counseling, conspiring with and procuring each other, did procure the commission of the crime of corrupting the state legislators as aforestated and as part of a criminal design, to-wit: then and there as alleged above with the intent to unlawfully induce the passage of Chapter 18, Laws of 1973, con-

trary to the provisions of M.S.A. 609.05 by acts and omissions as alleged above of the aforesaid defendants Klein and Davies acting for and on behalf of themselves and each of the other defendants, to-wit: Oscar Knutson, James C. Otis, Walter F. Rogosheske, C. Donald Peterson, Fallon Kelly, Wendell Anderson, John J. Todd and Harry H. MacLaughlin. The actions as aforestated of the defendants and each of them with the intent then and there as alleged above, entertained by all the said defendants and each of them to influence the aforesaid legislation in respect to their vote and performance of their duties, all contrary to M.S.A. 609.425, to-wit:

"609.425 Corruptly influencing legislator

Whoever by menace, deception, concealment of facts, or other corrupt means, attempts to influence the vote or other performance of duty of any member of the legislature, or person elected thereto may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both. Laws 1963, c. 753."

WHEREFORE, the plaintiff prays that the defendants herein and each of them be adjudged guilty on each count above-named and that each defendant be sentenced in accordance with law as the same is prescribed by Minnesota Statutes for the crimes of Conspiracy and Corruptly Influencing Legislators.

/s/J. J. WILD, M.D., Ph.D.
Attorney Pro Se
1100 East 36th Street
Minneapolis, Minnesota 55407
Telephone: 721-5915

State of Minnesota
County of Hennepin—ss.

J. J. WILD, M.D., Ph.D., being first duly sworn, on oath deposes and says: That he is the plaintiff in the foregoing Summons and Complaint; That he has read the same and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on information and belief and, as to such matters, he believes them to be true.

/s/J. J. WILD, M.D., Ph.D.

Subscribed and sworn to before me this 3rd day of February, 1976. — /s/M. Jacquelin Stevenson, Notary Public, Hennepin County, Minn. My commission expires Dec. 17, 1979.

STATE OF MINNESOTA — DISTRICT COURT
County of Hennepin — Fourth Judicial

File No. 720506

STATE OF MINNESOTA, ex rel,
J. J. WILD, M.D., Ph.D.,
Plaintiff,

vs.

JAMES C. OTIS, Esq.,
Defendant.

ORDER FOR JUDGMENT OF DISMISSAL

The above-entitled matter came on for hearing before the undersigned, one of the judges of the above-named Court, at a Special Term thereof on the 5th day of December, 1975 at the Government Center, City of Minneapolis, County of Hennepin, State of Minnesota.

Plaintiff appeared pro se; and Leonard J. Keyes, Esq., appeared on behalf of defendant.

The Court, upon oral arguments, together with all the files, records and proceedings herein, and being fully advised in the premises,

IT IS HEREBY ORDERED that the above-entitled action be dismissed because the court lacks jurisdiction over the subject matter. Defendant is therefore entitled to judgment of dismissal against plaintiff, plus costs.

ALLEN OLEISKY
Judge of District Court

Dated this 26th day of February, 1976.

MEMORANDUM

Plaintiff in the instant action would have this Court sustain the initiation of a criminal prosecution by one private citizen against another. Plaintiff's pleadings, in which he alleges the commission of the crime of perjury by defendant and demands that defendant be found guilty of and sentenced for this alleged crime by this court, have not been approved in writing by the Hennepin County Attorney, nor, in the certified unavailabliity of the Hennepin County Attorney, by a judicial officer authorized to issue process for alleged felonies.

This court's criminal jurisdiction is defined and governed by the due process clauses of the state and federal constitutions and by the Minnesota Rules of Criminal Procedure. These Rules, constituting the rudiments of procedural due process, set forth the exclusive bases of criminal jurisdiction. Rule 10.01 provides in pertinent part:

> "Pleadings in criminal proceedings shall be by the indictment, complaint or tab charge and the pleas prescribed by these rules. . . ."

Rule 17.01 provides that:

> "An offense which may be punished by life imprisonment shall be prosecuted by indictment. Any other offense defined by state law may be prosecuted by indictment or by a complaint as provided in Rule 2. . . ."

Rule 2.02 provides that:

> "A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed."

Comment, Rule 2 states that "Under these rules (See Rules 10.01, 2.01, 17.01) the complaint, the tab charge and indictment are the only accusatory pleadings by which a prosecution may be initiated and upon which it may be based. . . . Rule 2.02 requires the prosecuting attorney's written approval of the filing of a complaint. This is in accord with ABA Standards, Prosecution Function 3.4 (Approval Draft, 1968) that the decision to institute criminal proceedings shall be initially and primarily the responsibility of the prosecutor."

In view of the fact that the Hennepin County Attorney, the prosecuting attorney authorized to prosecute the offense charged in the instant action, has not approved the issuing of a complaint against defendant herein, either in writing or otherwise, and the fact that the Hennepin County Attorney is and has been available at all times, this court (or any other court) does not have jurisdiction or authority to entertain this action. The determination of whether or not to institute a criminal prosecution is purely a prosecutorial function. Fur-

thermore, it should be noted that under Rule 30 of the Minnesota Rules of Criminal Procedure, the prosecuting attorney has the absolute right to dismiss a complaint even without the court's approval. The prosecutorial function is neither judicial nor legislative, but rests exclusively in the hands and discretion of those public authorities to whom it has been entrusted by constitutional and statutory mandates. *See: State ex rel, Kurkierewicz v. Cannon*, 42 Wis. 2d 368, 166 N.W.2d 255 (1969). Criminal prosecutions cannot rest in the hands of private citizens.

When a local prosecutor refuses to approve a complaint, as referred to in Comment, Rule 2.02, the remedy available is to seek indictment by the grand jury, or, should this effort fail (as it did with regard to plaintiff's allegations in the instant action since it returned a No Bill against defendant when the case was presented to it), to resort to the electorate.

JOHN JULIAN WILD, M.D., Ph. D.
15 April 1976

The Honorable Allen Oleisky
Judge of District Court of Hennepin County
1559 Courts Tower
Minneapolis, Minnesota 55487

My dear Judge Oleisky:

Ref. File No. 720506 Wild v. Otis

I am preparing an appeal in the above entitled matter and I noticed that in your memorandum (page 2) you erroneously state that the grand jury returned a no bill in favor of the defendant Judge Otis. This is not the case: the grand jury, being led by the prosecuting attorney, did *nothing*. I would appreciate your reissuing your memorandum so that it is in conformity with the facts.

If, on the other hand, you feel that this is a material matter, perhaps we should reargue the entire case.

Please let me know by return mail what your disposition is in this matter.

Very truly yours,
J. J. WILD, M.D., Ph. D.

JJW:hs
cc: Leonard J. Keyes

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
(File No. 409747)

STATE OF MINNESOTA ex rel,
J. J. WILD, M.D., PhD.,
Plaintiff,

vs.

OSCAR R. KNUTSON, Esq., JAMES C. OTIS, Esq., WALTER F. ROGOSHESKE, Esq., C. DONALD PETERSON, Esq., FALLON KELLY, Esq., WENDELL ANDERSON, Esq., JACK DAVIES, Esq., JOHN J. TODD, Esq., HARRY H. MACLAUGHLIN, Esq., and RICHARD E. KLEIN, Esq.,
Defendants.

ORDER

The above matter came on for hearing before the undersigned Judge of the District Court at a Special Term of said court held on April 13, 1976, in St. Paul, Minnesota.

Plaintiff appeared in person, pro se; and Defendants appeared by Thomas H. Jensen, Esq., Special Assistant Attorney General, for Warren Spannas, Attorney General for Minnesota. In addition, James M. Williams, Esq., appeared as observer with plaintiff and was allowed to address the Court on plaintiff's behalf.

Defendants moved to dismiss Plaintiff's action on the grounds that there is no jurisdiction in this court to hear the action, and further on the grounds that Plaintiff's complaint failed to state a claim upon which relief could be granted.

The Court has reviewed the files and records herein, and on the pleadings, the memoranda of the parties and their oral arguments at the time of hearing, makes the following order:

IT IS ORDERED:

(1) Defendants' motion to dismiss Plaintiff's cause of action is herewith granted; and

(2) Plaintiff's cause of action is dismissed with prejudice.

SIDNEY P. ABRAMSON
Judge of District Court

Dated: April 20, 1976.

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

STATE OF MINNESOTA ex rel,
J. J. WILD, M.D., PhD.,

Plaintiff,

vs.

OSCAR R. KNUTSON, Esq., JAMES C. OTIS, Esq., WALTER F. ROGOSHESKE, Esq., C. DONALD PETERSON, Esq., FALLON KELLY, Esq., WENDELL ANDERSON, Esq., JACK DAVIES, Esq., JOHN J. TODD, Esq., HARRY H. MACLAUGHLIN, Esq., and RICHARD E. KLEIN, Esq.,

Defendants.

MEMORANDUM

The motion to dismiss arises out of plaintiff's action which, if properly understood by this Court, alleges that various violations of Minnesota Statutes amounting to criminal offenses were presented to the Ramsey County Prosecutor, who refused to accept and prosecute, and, what is more, in conjunction with the unnamed foreman of the Ramsey County Grand Jury, reportedly refused plaintiff's request to appear before that body resulting in the running of the Statute of Limitations on the asserted criminal conduct. These facts, according to plaintiff, grant this Court jurisdiction to entertain this "citizens action" to insure "the alleged crimes will (not) go unprosecuted and unpunished."

The named defendants, include the former Chief Justice of the Minnesota Supreme Court; five Associate Justices; the

Court Administrator; a State Senator and Minnesota's Governor. Plaintiff contends in summary that from January 1973 thru March 9, 1973, defendants conspired to influence the Legislature by concealment and deception to hide from the Legislature the asserted inter-relationship between the State Supreme Court, a local foundation and local insurance companies, apparently to the detriment of plaintiff insofar as the Legislature enacted into law Laws of Minnesota 1973, Chapter 18, Section 1. The above section allowed disqualified judges to name their successors to hear an appeal in a case plaintiff had successfully presented in the District Court of Hennepin County. The appeal resulted in a reversal of the prior district court verdict.

Plaintiff contends this conduct is tantamount to two felonies, specifically conspiracy as well as corruptly influencing legislators. Plaintiff accordingly prays that the named defendants be adjudged guilty of the two counts of violation of the criminal statutes, and further that they be sentenced according to law.

Defendants' motion includes a request for an order dismissing the whole action on grounds that the Court lacks jurisdiction of both the subject matter and personal jurisdiction of the defendants; and further on the grounds that plaintiff's complaint fails to state a cause of action or a claim upon which relief may be granted. For all of the reasons stated by defendants, plaintiff's action is herewith dismissed. The Court has neither personal nor subject matter jurisdiction. (See Rule 2.02, 10.01, 17.01 MRCP). In addition, plaintiff's claim fails to state a cause of action, as a private citizen has no authority to bring a criminal action, that is, a private

citizen cannot state a claim upon which criminal sanctions alone can be based. *Keenan v. McGrath*, 328 Fed 2d 610 (First Cir 1964).

In *U.S. ex rel Savage v. Arnold*, 403 Fed Sup 172 (ED Pa) 1975, the Court uses language which recognizes that in an appropriate case a court may well refer a private criminal complaint to a United States Attorney sua sponte without the formalistic steps provided for by Federal procedure. "However realtor's complaint, as he has presented it, is not worthy of such consideration, since it is totally lacking in the essential elements required . . ." 403 FS 172 at 175.

Plaintiff's action here is worthy of no consideration since it lacks any of the essential elements required. Accordingly, defendants' motion for dismissal is granted.

SPA.